

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

BARBARA WILLIAMS, et al.,

Plaintiffs,

v.

DOLGENCORP, INC.,

Defendant.

CIVIL ACTION NO.

02-AR-1873-S

FILED
02 SEP 16 PM 2:22
U.S. DISTRICT COURT
N.D. OF ALABAMA

ENTERED
SEP 16 2002

MEMORANDUM OPINION


This case was removed by defendant, Dolgencorp, Inc., under 28 U.S.C. § 1332, upon an allegation that there is complete diversity of citizenship and that the amount in controversy exceeds \$75,000. The diversity is undisputed, but plaintiffs, Barbara Williams and Helen Startley, who did not claim a specific amount of damages in their state-court complaint, now inform the court in their motion to remand that they never intended to seek more than \$75,000 each. The requisite amount in controversy must be satisfied separately as to each plaintiff, and the heavy burden of proof is upon the removing defendant.

This is not a case of a plaintiff's attempting to amend a state-court complaint after removal to reduce the *ad damnum* below \$75,000, when the original complaint clearly set forth an *ad damnum* in excess of \$75,000. Rather, this is a case of clarifying an ambiguity or an enigma, whether or not deliberately created by plaintiffs, now making clear what this court would have concluded *sua sponte* under the emerging requirement that a trial court not

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allow a Constitutionally excessive verdict to stand, namely, that the amount of the recovery by each of these plaintiffs can never exceed \$75,000. This truth necessarily leads to a finding that this court of limited jurisdiction lacks subject matter jurisdiction and must grant plaintiffs' motion to remand, something that will be done by separate order. If either plaintiff should ever ask for more than \$75,000 in her state action, her case can again be removed. Defendant's improvident removal was worth something to it.

DONE this 16th day of September, 2002.



WILLIAM M. ACKER, JR.
UNITED STATES DISTRICT JUDGE